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In the  
**United States Court of Appeals**  
For the Ninth Circuit

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THE PARKER APPLIANCE COMPANY,  
*Plaintiff-Appellant,*

*vs.*

IRVIN W. MASTERS, INC.,  
and

JOSEPH C. COLLINS, doing business as  
COLLINS ENGINEERING CO.,  
*Defendants-Appellees.*

} Appeal No. 12,848.

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**APPELLANT'S REPLY BRIEF.**

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August 23, 1951.



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**APPELLANT'S REPLY BRIEF.**

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**Introduction.**

This brief is divided into three parts:

1. A statement of the controlling facts not challenged by Appellees.
2. Exposure of the errors made by Appellees with respect to the record evidence.
3. Discussion of the fallacies of Appellees' position, many of which find their source in the record errors.

## PART I.

**Appellees' Brief Does Not Challenge Numerous Controlling Facts Upon Which Appellant's Position Is Based.**

The decisive undisputed facts are that:

1. The sleeve head angle (defined at pages 9-11, our main brief) was wholly new with Parker (our main brief, pp. 18-20).
2. The Armed Forces, after searching for a non-proprietary coupling, adopted the sleeve head angle in the revised AC-811 coupling (R. 1420) and in the AN coupling (R. 1416) (our main brief, pp. 26-28). This construction was, and still is, required on all military aircraft (our main brief, pp. 26-28).
3. The Parker differential angle (defined at pages 9, 12, our main brief), as distinguished from mere toe contact, is not shown in the prior art (our main brief, p. 20).
4. There is no prior art showing the combination of sleeve head angle and differential angle.
5. The 18½ degree "rework angle" was added to the size 2 to size 6 AC-811 and AN couplings after an accident investigation by Appellees' expert Adams showed this to be necessary (our main brief, p. 28). This "rework angle" provides an initial angle between the outside of the tubing flare and the inside of the toe end of the sleeve which is the differential angle (compare Charts 2, 5, and 7, our main brief).
6. The District Court merely made the generalized observation in its opinion that the Parker changes do not "justify a monopoly" (R. 77). Even the findings, prepared by counsel for Appellees, include only an unexplained list of sixteen patents and publications without suggestion as to how any show either the sleeve head angle or the differential angle (R. 82).
7. There is no evidence challenging the patent Examiner's finding that the Parker patent is a sufficient disclosure and that the claims cover no more than Parker's invention (our main brief, pp. 43-47).



8. Three-piece couplings were known prior to the Parker patent here-in-suit. Parker's changes over the art lie in the rearrangement of these elements, as distinguished from the addition of a new element to a known combination, as occurred in *Halliburton v. Walker*, 329 U. S. 1 (1946) (our main brief, pp. 54-55).

We list these controlling facts because Appellees parrot the rule, recognized in our main brief, that findings of fact cannot be reversed unless clearly erroneous (*i. e.*, Appellees' brief, pp. 6-9). Aside from these undisputed facts, the whole point on this appeal is that the District Court made findings and arrived at conclusions that are wholly unsupported by evidence. This is exactly the kind of error that this Court is intended to rectify and should rectify. Appellees ask this Court to rubber stamp the decision below—something this Court does not and should not do.

## PART II.

### **Appellees Take Liberties With the Record. The Variance Is Especially Great in Connection With the Most Significant Aspects of This Case.**

The brief filed by Appellees abounds in statements of fact without record reference, in violation of rule 20-2(f) of this Court. It also contains numerous record references which wholly fail to support the statements of the brief.

Any argument can be made convincing by substituting an advocate's choice of unproven facts for the record evidence.

As a specific illustration of the unsupported statements in Appellees' brief, we here dissect the two top paragraphs of page 21 which, because they purport to challenge the commercial importance of the differential angle, are exceedingly important to the disposition of this case.

Beginning with the first full sentence, page 21, we read:

“\* \* \* With respect to the practice of the Lockheed Aircraft Company the presence of a differential angle is not important (R. 671). \* \* \*”

Reference to this page of the record shows that it contains no such testimony and that the only mention of Lockheed is that “they use, **all the time**, AN type flares, 10061, and the **AN 819** sleeves,” although nuts and bodies are interchanged.\* Use of the AN type sleeves means that, in the size 6 and smaller, the differential angle is used (our main brief, p. 28 and R. 1416). Incidentally, the AN 819 sleeves include the sleeve head angle (R. 1416).

Continuing at page 21 of Appellees’ brief:

“\* \* \* On the world-famous Constellations manufactured by the Lockheed Aircraft Company and the P-38 fighter plane a combination fitting was employed utilizing nut, sleeve, and body as depicted in Exhibit R. The inside sleeve angle as there shown exclusive of the  $18\frac{1}{2}^{\circ}$  rework angle flares out in a direction which makes toe contact impossible and hence no differential angle exists or is employed.”

As pointed out above, Lockheed **always** uses AN sleeves so as to secure their advantages, including the differential angle in sizes 2 to 6 and the sleeve head angle in all sizes. Appellees’ Exhibit R (significantly not in the printed record) shows such a size 6 coupling with the  $18\frac{1}{2}^{\circ}$  “rework angle” and hence the differential angle, contrary to Appellees’ representation above.

The second paragraph at page 21 of Appellees’ brief reads:

“The differential angle was unimportant to the Douglas Aircraft Company. They used AC-811 fittings, an assembly of which is illustrated in Exhibit Q. The angle at the inside of the sleeve head flare

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\* Emphasis ours throughout.

is greater than the angle on the exterior of the flare on the tubing so that there can be no toe contact. Some 50,000 airplanes produced by North American Aviation Corp. were manufactured and operated successfully with fittings of that description (R. 703-704).

\* \* \*

The facts are that Douglas, like the other aircraft companies, now uses the AN couplings (R. 793). Appellees' own expert Adams testified that they even use these couplings to replace the earlier type couplings originally installed on the DC-3 planes (R. 790-793). Adams also testified that he would not recommend that Douglas return to the earlier couplings, which did not include either the sleeve head angle or differential angle (R. 798).

Exhibit Q (not in the printed record) shows a size 8 coupling. This size never has the differential angle (our main brief, p. 57). Douglas always uses a differential angle in sizes 2-6. The reference to Exhibit Q in the above quotation is therefore misleading.

The fact further is that the 50,000 airplanes made by North American between 1936 and 1943 used the AC-811 coupling as Appellees' witness Bumb testified (R. 703-704). The sleeves of AC-811 fittings were modified by 1940 to include the sleeve head angle and the differential angle in sizes of size 6 and below (our main brief, p. 27; R. 1420).

These erroneous statements are repeated in substance at page 29 of the brief.

We here set forth in tabular form additional selected errors:

**APPELLEES ASSERT.**

"The fitting was to be a non-proprietary fitting (three piece fitting) so as to be available to all users from many sources (R. 563, 651)." Page 2, line 8, Appellees' Brief.

"The newly adopted fitting was designated the Army-Navy Standard Three-Piece Fitting or AN Standard. Other acceptable fittings include the AC811 three-piece fitting and the AN817 two-piece fitting." Page 2, line 10, Appellees' Brief.

"Commercial aircraft manufacturers as a matter of expediency have also turned to a large extent to the AN Std. fittings." Page 2, line 17, Appellees' Brief.

"The witness (Wolfram) further pointed out that in the patent and to follow the patent teaching it is necessary to have radial contact at least at the large end of the sleeve head." Page 11, line 6, Appellees' Brief.

**THE FACT IS.**

The Government always desires non-proprietary equipment (R. 582). Nevertheless, a patented fitting was chosen (our main brief, p. 27). The record, page 651, referred to, is Masters' testimony that Parker originated the sleeve head angle.

The AC811, since 1940 has included the sleeve head angle in all sizes and the differential angle in sizes of 6 and below (R. 1420). The AN and revised AC811 fittings have wholly replaced all two-piece fittings, except in special cases (R. 1220-1221).

There is no record reference for this statement. As a matter of fact, Adams, Chief Engineer, for Douglas, does not recommend that Douglas go back to the old fittings on its own planes (R. 798).

Wolfram testified that the statement "\* \* \* they will contact only in the region of the clamping shoulder \* \* \*" which only appears in Claim 2, means that there must be means for limiting radial expansion in the large end of the sleeve head (R. 416).

# APPELLEES ASSERT.

"This company (North American) actually prefers the flareless fitting (R. 705)." Page 21, line 23, Appellees' Brief.

"As has been pointed out in various portions of the evidence, the strength and judgment of the mechanic in exercising torque for making the fitting will be the determining factor in whether or not a fitting fits the claims (R. 585)." Page 28, line 26, Appellees' Brief.

"Although toe contact is claimed to make the amount of nut turning less critical, Exhibit 28Q, there is no toe contact in the AN Std. fitting, Exhibit O." Page 35, line 15, Appellees' Brief.

"If AN Std. fittings is synonymous with 'Parker fittings' or 'Parker couplings' (App. Op. Br. 27), then the Parker fitting is in the public domain because Parker used the same sleeve clearance and differential angle on February 18, 1935 (Ex. KK), and that was called a Parker type fitting." Page 35, line 31, Appellees' Brief.

# THE FACT IS.

The witness Bumb of North American stated (R. 705) that he isn't sure the flareless fitting is better and for some purposes that it is not as good as the AN fitting.

There is testimony (R. 585) relating to the judgment of a mechanic in making up a fitting but no testimony that his judgment determines whether or not a fitting satisfies the claim. In fact, one advantage of the Parker fitting is that it is less sensitive to adjustment than the prior fittings (R. 798; our main brief, pp. 34-39).

Of course not, Exhibit O (not in the printed record) is a size 8 fitting which does not have the differential angle and is not claimed to have such angle. Differential angle is found in sleeve sizes 6 and lower.

The fact that fittings made without the two angles in question were called Parker type fittings in 1935 does not put the present day fittings in the public domain. The Parker type fittings of 1935 did not use the two angles present in the Parker type fittings after 1940. The Parker type fitting of 1935 did not include the two features found in the Parker patent and now used by the Appellees.



## **The Charts Appended to Appellees' Brief Are Not in Evidence and Are Inconsistent With the Record Evidence.**

If the charts used by Appellees were exhibits, or photographic reproductions of exhibits, we would not object to them. Actually, they are sketches, made by some unknown artist, to buttress Appellees' arguments with an aura of authenticity. No witness has testified to the accuracy of the charts; no identification of their source has been made; no opportunity has been given to cross-examine as to them.

Space limitations preclude detailing the numerous liberties taken by Appellees. We merely discuss by way of example the grosser errors of Sheet No. 1.

Sheet 1, diagram E, shows a space "A" almost as large as the space "C". The fact is that Appellees' Exhibit O and Appellant's Exhibit 48 both accurately show the AN coupling in which the space A is minute as compared to the space C. In other words, the sleeve head angle is a major aspect of the construction and not a minor detail as shown in diagram E. The actual exhibits tell the true story in accordance with the facts. The presently reconstructed diagram E of Sheet 1 of Appellees' brief tells a distorted story. Why didn't the Appellees reproduce the **actual exhibit drawings**?

Sheet 1, diagram G, is an illustration, based on an assumed set of facts, of a physical device made by Appellees for the purpose of the trial (R. 610). It shows contact between the toe end of the sleeve and the inside of the nut. This abnormal situation is not in accord with present couplings as testified to by Masters (R. 682). Yet diagram G shows contact. Again Appellees endeavor to make a point from an abnormal assumed situation of a single physical device **made for the trial** and forget the millions of normal fittings that do not touch (R. 682).

## PART III.

**Invention Cannot Be Overcome by Confusing the Sleeve Head Angle With Clearance.**

Appellees repeatedly characterize the sleeve head angle as mere "clearance" (*i. e.*, p. 14). This is a patent effort to overcome facts by misnomers. We agree that along with the sleeve head angle there must be some clearance. Such characterization gives no clue as to the presence or absence of invention.

Appellees declare that:

"A clearance is just as good as a sleeve head angle."  
(Appellees' brief, p. 29.)

The fact is that no witness testified to this effect. **Not one of the six page references in Appellees' brief support this statement.** The actual fittings involved do have a sleeve head angle. The engineers of large aircraft manufacturers want it (*i. e.*, R. 798).

Appellees point out (p. 16) that the art used clearances long prior to Parker. This is a fact. The point is that no one thought of a sleeve head angle. Parker described it in his patent. The industry has adopted it to the exclusion of the prior art (our main brief, pp. 23-6). Counsel for Appellees admitted the sleeve head angle to be new (R. 458, our main brief, p. 20).

As pointed out in our main brief (pp. 33-37), the sleeve head angle gives rise to numerous advantages that cannot be achieved by mere clearance. Numerous witnesses testified to these advantages and their importance (R. 876-7, R. 1149-50, R. 1198-1200). Appellees assume that sleeve head angle and clearance are the same and thus one is as good as the other. The assumption is contrary to the fact. Appellees' self-serving statement is equally wrong.

Parker made an invention, and a valued one. It cannot

be obscured by assuming that sleeve head angle and clearance are the same.

**Appellees Cannot Obliterate the Presence of the Sleeve Head Angle by Arguing the Irrelevant Question of the Degree of Radial Contact Between Sleeve Head and Clamping Nut.**

Section I of Appellees' brief places heavy emphasis upon the purported proofs that the sleeve head does not have actual radial contact with the clamping nut.\* This is a wholly false issue. The sleeve head angle is present in the fitting whether or not there is actual contact in any specific instance.

Chart 2 of our main brief (page 9) identifies the sleeve head angle. While in the specific patent structure the shoulder part of the sleeve (red) actually is in radial contact with the clamp nut (green), the angle is present regardless of contact. In fact, Parker only sought a coupling wherein the sleeve head "is so shaped as to be free from radial contact with the outer sleeve when the coupling members are in firm gripping contact with said flared end of the tube" (patent—col. 1, line 30, R. 1325).

Later, in the patent specification, Parker states:

"\* \* \* In other words, the inner flare surface of the sleeve will yieldingly clamp the flared tube end while unlimited expansion of that portion of the head adjacent the clamping shoulder will be prevented" (patent—col. 1, line 43, R. 1326).

The claims are consistent with the specification. Claim 2 only requires that **when and if** contact is made, such contact be at the shoulder end of the sleeve head (R. 1326).

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\* This discussion really goes to the question of infringement. We do not object to consideration of the matter at this stage of the proceeding. It should not be overlooked, however, that Judge Westover never passed on this issue, and there is no presumption, one way or the other, from his decision.



Claim 3 states that the toe, or tube contacting parts of the sleeve head, be out of contact with the clamping nut (R. 1326).

Appellees are incorrect in representing that our position is based on actual contact (page 17, line 9).

The Parker specifications and claims (pointedly ignored in Appellees' brief) make it perfectly evident that the gist of the sleeve head angle lies in the concept of greater sleeve head flexure at the toe end than at the shoulder end, with unlimited shoulder expansion restrained. This gives rise to the advantages described in our main brief (pp. 33-37). It is embodied in the revised AC-811 sleeve by the  $1\frac{1}{2}$  degree sleeve head taper shown in the central top drawing of page 1420 of the record. It is likewise embodied in the AN sleeve by a like angle of 1 degree (R. 1416).

Moreover, the contentions as to the shoulder contact under certain conditions do not alter the fact that it is always possible and does occur under certain conditions and when it does occur it prevents unlimited shoulder expansion. The contact is like a safety valve—preventing unlimited expansion when called upon to do so and not otherwise.

The Record is replete with instances of actual shoulder contact. The drawings, Appellees' Exhibit O\* and Appellant's Exhibit 48 (R. 1380) show a very small radial shoulder spacing for the finger tight condition that inherently results in a prompt actual contact when the coupling is tightened. The photograph, Appellant's Exhibit 78 (R. 1409) also shows contact. The witnesses, Murphy (R. 865), Middleton (R. 901), and Wolfram (R. 462-463), testified that contact in fact occurs.

Parker limited the expansion of the sleeve head at the shoulder and at the same time provided for hoop tension

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\* Not in printed record but referred to in Sheet No. 1, Appellees' brief.

expansion at the toe end. The sleeve head angle eliminates the freezing of the sleeve to the nut (our main brief, pp. 34-6).

**The Differential Angle of the Parker Patent Finds Full Response in the  $18\frac{1}{2}$  Degree "Rework Angle" of the Size 2 to Size 6 AN and AC-811 Couplings.**

There is no mystery about the term "differential angle." It is fully identified, with reference to the patent drawings, at pages 9 to 12 of our main brief.

There is accordingly no excuse for the irrelevant Sheet 2 and accompanying discussion of Appellees' brief which confuses differential angle with the taper of the tubing flare. Moreover, the coupling shown in Diagram E of that chart (Appellees' Exhibit O—significantly omitted from the printed record) is a size 8 coupling as can be verified from the actual exhibit. This size does not have the  $18\frac{1}{2}$  degree "rework angle" and hence does not have the differential angle. It is not now, and never has been, accused as an infringement of the differential angle feature found only in claims 1 and 3 of the Parker patent. Claim 2 relates only to the sleeve head angle.

This again goes to the matter of infringement, and not validity.

**Patent 1,977,241, Upon Which Appellees Belatedly Rely, Was Not Considered Pertinent by the District Court; Was Found Inapplicable by the Patent Examiner; and Does Not Show a Usable Structure.**

We are amazed to find that at this late stage Appellees have discarded the sixteen patents listed in the Findings of Fact by Judge Westover (Finding IX, R. 82) and now place major reliance on Parker patent 1,977,241 (Brief, pp. 18-19, Chart 2, Diagram B). Appellees did not even re-

quest inclusion of this patent in the printed record and did not ask that it be included with the patents listed.

The simple answer to patent 1,977,241 is that it shows the mere idea of initial toe contact—not the differential angle. In the 1,977,241 patent the sleeve is cut away at the toe end to make it flex when tightened (R. 911). In the patent here-in-suit, exactly the opposite occurs for the flare deforms more than the toe bends (our main brief, pp. 37-38, Appellant's Exhibit 78, R. 1409). Even Adams admitted that the 1,977,241 patent "doesn't show a construction that \* \* \* would be very satisfactory" (R. 729).

The digging or flare deforming action of the sleeve arising from the differential angle is rather well shown in Appellant's Exhibit 78 (R. 1409). This photograph was taken by Appellees' expert Adams for an engineering report **unconnected with and prior to this suit** (R. 713, 822). It constitutes convincing evidence that the differential angle advantages are used in the AN and AC-811 couplings. Its effect cannot be avoided by applying the legend "Expansion does not convert the  $18\frac{1}{2}^{\circ}$  portion to area contact" or by taking liberties in sketching the photograph, as is done in Sheet No. 3, Diagram B. Again the legend goes to the matter of infringement. The legend is also contradicted by Adams (R. 802) and Davies (R. 1067-1068).

The witness Wolfram actually built a number of couplings like that of the 1,977,241 patent and found that Adams was right. The couplings failed when tightened (R. 907-911).

The patent Examiner cited the 1,977,241 patent in connection with the Parker patent here-in-suit. After fully considering this prior art patent, he decided that his original reliance was error and allowed the claims now in the patent.

It is well settled that the presumption of patent validity is particularly strong where the prior art relied upon was before the Examiner. See, as typical, *Bianchi v. Barili*, 168 F. (2d) 793, 796 (C. A. 9, 1948). It is equally well settled that a prior art reference to a structure that made no impact on the industry, and is not practical, is of slight effect. See, for example, *Wahl Clipper Co. v. Andis Clipper Co.*, 66 F. (2d) 162, 165 (C. A. 7, 1933).

Judge Westover was right when he rejected the 1,977,241 patent as a basis for his decision.

**The Sleeve Head and Differential Angles Make Possible a Coupling That Has Displaced All Others for Aircraft Applications. This Is Not a "Minor" Matter.**

At pages 31-34, Appellees discuss a number of cases in support of the generality that "minor changes and perfection of workmanship" are not patentable. Not one of the cases cited is like the present case where the art had long experimented in quest of an improved coupling; adopted the new coupling to the exclusion of others after its invention; and has not since replaced it. In a field of application, such as aircraft, where the coupling protects the lives of our servicemen as well as passengers in aircraft, this accomplishment cannot be minimized by calling it minor or trivial. It is vital and all-important in court as well as in practice (See our main brief, pp. 38-40).

**The Patent Law Does Not Require That Dimensions Be Specified in Particular Units of Measurement. The Sole Requirement Is That the Invention Be Disclosed to Those Skilled in the Art.**

Appellees emphasize, and re-emphasize, the failure of the Parker patent to state, **in degrees**, the size of the sleeve head angle and the differential angle (note espe-



cially pp. 43-47). The substance of the argument is that a patent is invalid which does not specify, **in degrees**, every angle, regardless of how well the principle of the invention is expressed and how correctly the drawings show the embodiment of that principle in an exemplary structure.

Section 4888 R. S. (35 U. S. C. 33) is crystal clear that the description need only be "in such full, clear, concise and exact terms as to enable any person skilled in the art \* \* \* to make, construct, or compound, and use the same \* \* \*." This requirement is met just as well by a full description of the Parker principles (which Appellees do not deny exists) and a drawing from which the angles can be measured if desired, as by an encyclopedic listing of all the possible angles, in degrees, that might be used.

Wolfram was absolutely correct in stating that there is no difficulty making a Parker coupling from the patent once the principle is brought to light by reading the patent (R. 440). His testimony on this point stands unchallenged.

Appellees cite no authority for their absurdly technical contention. There is none. *Smith v. Snow*, 294 U. S. 1, 11 (1935) (our main brief, p. 48), is illustrative of the numerous cases that have refused to demand a detailed listing of every dimension, angle, temperature, etc., in terms of a particular unit of measure.

It is particularly significant that Appellees have introduced no testimony, and do not in their brief suggest, that the one degree sleeve head angle of the AN specifications (R. 1416) or the  $1\frac{1}{2}$  degree sleeve head angle of the modern AC-811 coupling (R. 1420) differ in principle from the sleeve head angle shown by the Parker patent-in-suit.

**Wolfram Testified That the Parker Coupling Could Be Made Either by Engineering Design or by Experiment. No Witness Testified That Experimentation Is Required.**

The finding that no one could produce a coupling embodying the Parker features “without experimentation” (Finding XII, R. 84) is a cornerstone of the decision below. Appellees, recognizing this fact, devote a major portion of their brief to the testimony of Wolfram which they represent to support this finding (*i. e.*, pp. 23, 43-49).

Despite the prolonged and repetitive questioning on the point, Wolfram was steadfast in his testimony that:

1. The dimensions required to effect the sleeve head and differential angle vary from coupling to coupling and

2. That, following the principles set forth in the patent, these features can be achieved in any practical coupling by (a) **drawing board design** or (b) experimentation, whichever route the designer prefers.

In Wolfram's words, “the specific angle could probably best be determined by straightforward engineering analysis, or else experiment, **either one**” (R. 440).

Wolfram listed experimentation as one way to design a coupling. The District Court, relying on representations such as those in Appellees' brief, squarely held that it was the **only** way (Finding XII, R. 84). This is clear error.

**The Patent Examiner Correctly Found That the Parker Claim Language Meets the Statute and the Decisions.**

Despite the extent of the argument on claim language (pp. 37-64), Appellees point to no place in the record where there is testimony, or even an inference, that the Parker claims cover something more than or different

from that which Parker contributed to the art. Likewise, there is no suggestion of any evidence that one skilled in the art would have the slightest difficulty determining, from the claims read in the light of the specification, whether there is or is not infringement.

Appellees' argument necessarily fails because it is not supported by the record.

The authorities, including those cited by Appellees, fully support this basic requirement. For example, in *Research Products v. Tretolite Co.*, 106 F. (2d) 530, 533 (1939), cited in Appellees' brief, pp. 50 and 54, this Court declared:

"The question is as to whether or not these descriptions of the chemical agent to be used in the process are sufficiently clear and definite to be understood and applied by those engaged in the art of organic chemistry as applied to petroleum recovery (citing cases).  
\* \* \*

"This question is one of fact to be ascertained by the evidence of experts, *Toledo Rex Spray Co. v. California Spray Co.*, 6 Cir., 268 F. 201, 204. \* \* \*.

"We conclude that the finding of the court and special master as to the meaning of the patent is sustained by the testimony of credible experts appearing before the special master and that the finding should not be disturbed in so far as it is drawn in question here. If it is indefinite in some respects due to the comprehensive character of the invention and of the claims therefor, it is not uncertain in the area of description involved in this action. Any vagueness in these outlying boundaries of the description does not invalidate the patent as to that which is clearly defined. *Carnegie Steel Co. v. Cambria Iron Co.*, 185 U. S. 403; *Faultless Rubber Co. v. Star Rubber Co.*, 6 Cir., 202 F. 927."

In *Schumacher v. Buttonlath Mfg. Co.*, 292 Fed. 522, 532 (C. A. 9, 1920), the Court squarely rejected a defense of insufficiency of a patent disclosure because it was not sup-

ported by sufficient testimony. In the present case there is no testimony and the rule is doubly applicable.

The patent Examiner passed the Parker patent and in so doing approved the claim and specification language. Contrary to Appellees' contention (brief, p. 57) this is entitled to great weight. The authorities are unanimous that the presumption of correctness attends the Examiner's findings on all the requirements of a valid patent (our main brief, pp. 43-45). See also *Bank v. Rauland Corp.*, 146 F. (2d) 19, 23 (C. A. 7, 1944) (Appellees' brief, p. 50) where the Court stated:

"It is quite true that the Commissioner of Patents held the claims **sufficiently specific** and issued the patent. That ruling resulted in creating a presumption of validity of the claims \* \* \*."

While the Court there found evidence to overcome the presumption, it is perfectly clear from the decision that the defense must be supported by evidence. That evidence is not in the present record.

None of the cases cited by Appellees (pp. 37-42; 56-63) justify reversal of the Examiner's finding that the Parker claims are proper.

*Merrill v. Yeomans*, 94 U. S. 568 (1877) (brief, p. 38), *Bates v. Coe*, 98 U. S. 31 (1878) (p. 38), *Permutit v. Graver*, 284 U. S. 52 (1931) (p. 38), all merely express the generality that claims must be clear. They in no way suggest that Parker's claims do not meet the statute.

As pointed out in our main brief (pp. 52-53) the *Incan-descent Lamp* case, 159 U. S. 465 (1895) (brief, p. 38), involved a situation where the claims covered **all** filaments and the inventors contributed only one. In *Holland Furniture v. Perkins*, 277 U. S. 245 (1928) (brief, p. 38), the patentee made one glue and sought to monopolize all glues, including those that he did not invent. In *United Carbon*



*v. Binney & Smith*, 317 U. S. 228 (1942) (Appellees' brief, pp. 39, 40, 56, 61) the patentee claimed **all** carbon black of a particular kind when he had invented only **one** carbon black of that kind.

*General Electric v. Wabash*, 304 U. S. 371 (1938) (Appellees' brief, pp. 40, 41, 42, 53, 56, 61, 63) involved claims to **all** non-sagging filaments when the patentee invented only one.

*Halliburton v. Walker*, 329 U. S. 1 (1946), is fully distinguished in our main brief (pp. 54-55).

*Metals Recovery v. Anaconda*, 31 F. (2d) 100 (C. A. 9, 1929) (Appellees' brief, p. 53), is another case where the claim very clearly covered more than was invented.

*Research v. Tretolite*, 106 F. (2d) 530 (C. A. 9, 1939) (Appellees' brief, p. 54) involved claims that, like Parker's, covered only the invention and hence were held valid.

In *Farmers Cooperative v. Turnbow*, 111 F. (2d) 728 (C. A. 9, 1940) (Appellees' brief, p. 55), the patentee claimed **all** parasiticides capable of use but invented only one. *Corona v. Dovan*, 276 U. S. 358, 385 (1928) involved claims covering some 100 chemicals whereas the patentee invented only one. The claims were accordingly invalid.

In the present case there is no evidence, and not even an assertion in Appellees' brief, that the Parker claims cover more than he invented. No such contention can be made for the claims merely cover the sleeve head angle and the differential angle, and no more. Both features were new with Parker and Appellees now pay their respect to the Parker patent by manufacture and sale of fittings embodying those features. Here in Court, Appellees contend that those features are unimportant.

**The Renewal Statute, and Decisions Thereunder, Fully Supports the Parker Patent. Appellees' Interpretation of *In re Kaisling* Has Been Repudiated.**

It is sufficient in answer to the contentions based on *In re Kaisling*, 44 F. (2d) 863 (C. C. P. A., 1930) (Appellees' brief, pp. 64-5), to point out that the same court, four years later, squarely refused to interpret the decision as done by Appellees. In the later case, *Doherty v. Dubbs*, 68 F. (2d) 373 (C. C. P. A., 1934), the court very specifically held that additional claims could be added upon renewal. Since Parker merely added claims (and Appellees so admit, p. 64) there can be no doubt that the *Doherty* case, not the *Kaisling* case, controls.

Judge Westover was right in excluding this point as a basis for decision.

**Conclusion.**

“\* \* \* Patents often lend themselves to fine-spun theories; but it is singular how plain they are, if they are worth anything, to the man who wishes to infringe for profit.”

Judge Hough in  
*General Electric v. Mallory*,  
298 Fed. 579, 588 (C. A. 2, 1924).

The decision below should be reversed with directions to enter judgment for Plaintiff-Appellant.

Respectfully submitted,

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